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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 GUADALUPE MARTINEZ-
12 RODRIGUEZ,

13 Plaintiff,

14 v.

15 UNITED STATES, et al.,

16 Defendants.
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CASE NO. C08-265JLR

ORDER

18 This matter comes before the court on Defendant Kevin Wetteland's ("Agent
19 Wetteland") motion for summary judgment (Dkt. # 9). The court has reviewed the
20 papers¹ and for the reasons that follow denies the motion for summary judgment.
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22 **I. BACKGROUND**

23 On August 22, 2005, at the direction of Special Agent Steven Taibi of the Drug
24 Enforcement Agency ("DEA"), a Confidential Source ("CS") contacted Plaintiff
25 Guadalupe Martinez-Rodriguez to arrange for the purchase of methamphetamine.
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28 ¹Mr. Martinez-Rodriguez improperly filed a surreply (Dkt. # 22) that does not comply
with W.D. Wash. Local Rule CR 7(g). The court strikes the surreply.

1 (Compl. (Dkt. # 1) ¶ 11.) The CS and Mr. Martinez-Rodriguez agreed that Mr. Martinez-
2 Rodriguez would bring one pound of methamphetamine to the parking lot of Café
3 Arizona in Federal Way, Washington later that day. (Compl. ¶¶ 9, 13.) Mr. Martinez-
4 Rodriguez along with another person came to the parking lot of Café Arizona and
5 conducted a transaction with the CS. After the transaction, Mr. Martinez-Rodriguez was
6 placed under arrest by DEA agents. (Compl. ¶ 9.)

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8 In his complaint, Mr. Martinez-Rodriguez alleges that at the time of his arrest he
9 was leaning with his back against the trunk of a vehicle. (Compl. ¶ 14.) He contends that
10 he was wearing a white sleeveless t-shirt, shorts and sandals and that it was obvious that
11 he had no weapons on his person or within his immediate reach. (*Id.*) Mr. Martinez-
12 Rodriguez claims that to initiate the arrest, Special Agent Taibi approached Mr. Martinez-
13 Rodriguez with his gun drawn. (Compl. ¶ 15.) Mr. Martinez-Rodriguez contends that he
14 raised his hands and did not resist. (*Id.*) Agent Wetteland then “grabbed Mr. Martinez-
15 Rodriguez in a finger hold and forcibly knocked him face down on the pavement while
16 breaking three of the fingers on his right hand and causing Mr. Martinez-Rodriguez
17 excruciating pain.” (*Id.*) In addition to the injury to his fingers Mr. Martinez-Rodriguez
18 contends that he also suffered injuries to his forehead and right shoulder. (*Id.*) As of the
19 time of the complaint, Mr. Martinez-Rodriguez claimed that he had not regained use of
20 his three fingers and that he suffered from chronic right hand pain. (Compl. ¶ 18.)

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22 Agent Wetteland’s account of the incident differs in that he claims that as he
23 approached Mr. Martinez-Rodriguez to arrest him, Mr. Martinez-Rodriguez failed to
24 follow instructions, hesitated, looked around as if assessing the situation to determine
25 whether to flee and lowered his hands from above his head to his side as if he were
26 contemplating running. (*See* Declaration of Kevin Wetteland (Dkt. # 10) (“Wetteland
27 Decl.”) ¶¶ 6-7.) Agent Wetteland’s account is corroborated by Special Agent Taibi’s
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1 recollection of the events of August 22, 2005, given on September 7, 2005 at a
2 preliminary hearing. (See Declaration of Harold Malkin (Dkt. # 11), Ex. A.) Special
3 Agent Taibi recalled that: “I got out with my weapon drawn, I told [Mr. Martinez-
4 Rodriguez] to put his hands in the air and not to move. As soon as I did that his hands
5 went up, but immediately thereafter his hands went down. He looked in one direction,
6 and at that point a fellow agent took [Mr. Martinez-Rodriguez] to the ground.” (*Id.*)
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8 **II. ANALYSIS**

9 Summary judgment is appropriate if the evidence, when viewed in the light most
10 favorable to the non-moving party, demonstrates there is no genuine issue of material
11 fact. Fed. R. Civ. P. 56(c)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v.*
12 *County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the
13 initial burden of showing there is no material factual dispute and he or she is entitled to
14 prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its
15 burden, the nonmoving party must go beyond the pleadings and identify facts which show
16 a genuine issue for trial. *Cline v. Indus. Maint. Eng’g. & Contracting Co.*, 200 F.3d
17 1223, 1229 (9th Cir. 2000).
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19 **A. Qualified Immunity**

20 In examining the question whether Agent Wetteland is entitled to qualified
21 immunity the court engages in a two step process. The first question to be asked is:
22 “Taken in the light most favorable to the party asserting the injury, do the facts alleged
23 show the officer’s conduct violated a constitutional right?” *Saucier v. Katz*, 533 U.S.
24 194, 201 (2001). If the answer to the question is no then there is no need for further
25 inquiries regarding qualified immunity; however, “if a violation could be made out on a
26 favorable view of the parties’ submissions, the next, sequential step is to ask whether the
27 right was clearly established.” *Id.* In other words, “[t]he contours of the right must be
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1 sufficiently clear that a reasonable official would understand that what he is doing
2 violates that right.” *Id.* at 202 (internal quotation marks and citation omitted).

3 **1. Do the Facts Alleged Show That Agent Wetteland Violated a**
4 **Constitutional Right?**

5 Mr. Martinez-Rodriguez alleges that Agent Wetteland used excessive force when
6 he arrested him on August 22, 2005 violating his Fourth Amendment rights. The
7 Supreme Court teaches that in determining whether the force used to effect a particular
8 seizure was excessive the court should pay “careful attention to the facts and
9 circumstances of each particular case, including the severity of the crime at issue,
10 whether the suspect poses an immediate threat to the safety of the officers or others, and
11 whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v.*
12 *Connor*, 490 U.S. 386, 396 (1989). “[T]he ‘reasonableness’ inquiry in an excessive force
13 case is an objective one: the question is whether the officers’ actions are ‘objectively
14 reasonable’ in light of the facts and circumstances confronting them, without regard to
15 their underlying intent or motivation.” *Id.* Reasonableness must also “be judged from the
16 perspective of a reasonable officer on the scene, rather than with 20/20 vision of
17 hindsight.” *Id.* Additionally, “[t]he calculus of reasonableness must embody allowance
18 for the fact that police officers are often forced to make split-second judgments-in
19 circumstances that are tense, uncertain, and rapidly evolving-about the amount of force
20 that is necessary in a particular situation.” *Id.* at 396-97.

23 In support of his motion for summary judgement, Agent Wetteland submitted a
24 declaration detailing his version of the events leading up to and including Mr. Martinez-
25 Rodriguez’s arrest. Agent Wetteland states that he, along with other DEA agents,
26 witnessed Mr. Martinez-Rodriguez sell one pound of methamphetamine to the CS.
27 (Wetteland Decl. ¶ 2.) Before his arrest, Mr. Martinez-Rodriguez was not known to
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1 Agent Wetteland or to the principal case agent. (*Id.*) As part of his training Agent
2 Wetteland assumed that Mr. Martinez-Rodriguez might be armed to protect himself or the
3 methamphetamine in his possession. (*Id.*) Even though Mr. Martinez-Rodriguez was
4 wearing a sleeveless t-shirt and shorts Agent Wetteland was unable to determine from a
5 visual inspection that Mr. Martinez-Rodriguez was not armed. (Wetteland Decl. ¶ 3.)
6 Agent Wetteland states that he has encountered individuals dressed similarly to Mr.
7 Martinez-Rodriguez who were later found to have concealed weapons. (*Id.*)

8 After the agents saw the “bust signal” Agent Wetteland and other agents
9 immediately converged on the car where the deal had taken place. (Wetteland Decl. ¶ 5.)
10 Agent Wetteland contends that he and Special Agent Taibi approached Mr. Martinez-
11 Rodriguez with weapons drawn. (Wetteland Decl. ¶ 6.) Agent Wetteland claims that
12 Agent Taibi ordered Mr. Martinez-Rodriguez to lie on the ground, which he did not
13 immediately do. (*Id.*) Agent Wetteland states that instead, “although standing in place
14 and offering no physical resistance, Plaintiff quickly turned his head from side to side, as
15 if to assess possible avenues of escape. At the same time, and also within seconds of
16 being instructed to get to the ground, Plaintiff moved his arms to waist-level in apparent
17 preparation to break into a run.” (*Id.*) Agent Wetteland assessed the situation, including
18 Mr. Martinez-Rodriguez’s failure to follow orders as well as the movement of his head
19 from side-to-side and then he “lunged towards Plaintiff from the side and knocked him to
20 the ground in order to subdue him and place him under arrest.” (*Id.*)

21 Mr. Martinez-Rodriguez also submitted a declaration in response to the motion
22 filed by Agent Wetteland. In it Mr. Martinez-Rodriguez elaborates on his version of the
23 events of August 22, 2005. He states that at the time of the arrest he was ordered at gun
24 point to put both of his hands up in the air. (Declaration of Guadalupe Martinez-
25 Rodriguez (Dkt. # 18) (“Martinez-Rodriguez Decl.”) ¶ 3.) He contends that he
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1 immediately lifted his arms. (*Id.*) He claims that he did not turn his head from side to
2 side or lower his hands and that he stood frozen as the agent approached him with his gun
3 drawn. (Martinez-Rodriguez Decl. ¶¶ 4-5, 7.) He states that he was not ordered or
4 tackled to the ground but instead, while his hands were above his head, Agent Wetteland
5 grabbed three fingers of his right hand and forced his right arm behind his back.
6 (Martinez-Rodriguez Decl. ¶¶ 8-10.) Mr. Martinez-Rodriguez states that as his arm was
7 being forced behind his back and his fingers were being twisted and broken that he was
8 being pushed to the pavement where he landed on his knees and the right side of his
9 face/forehead and his right shoulder. (Martinez-Rodriguez Decl. ¶¶ 11-12.)

11 “Because [the excessive force inquiry] nearly always requires a jury to sift through
12 disputed factual contentions, and to draw inferences therefrom, we have held on many
13 occasions that summary judgment or judgment as a matter of law in excessive force cases
14 should be granted sparingly.” *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002). “This
15 is because such cases almost always turn on a jury’s credibility determinations.” *Smith v.*
16 *City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005). Here, despite the key differences
17 between the two accounts regarding whether Mr. Martinez-Rodriguez was taking actions
18 consistent with an intent to flee, Agent Wetteland contends that summary judgment is still
19 appropriate. He argues that, “[w]hile Plaintiff’s Declaration . . . places certain material
20 facts in dispute . . . it does not negate the reasonableness of his own perception of
21 Martinez-Rodriguez’s actions during the tense, uncertain and rapidly-evolving seconds
22 surrounding Martinez-Rodriguez’s arrest.” (Reply at 2-3.) On summary judgment the
23 court must view the facts in the light most favorable to Mr. Martinez-Rodriguez, here,
24 that means accepting as true Mr. Martinez-Rodriguez’s allegation that he was standing
25 frozen when Agent Wetteland pulled his hands behind his back breaking Mr. Martinez-
26 Rodriguez’s fingers.
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1 The *Graham* factors favor denying the motion for summary judgment. First, the
2 encounter between the men occurred just after Mr. Martinez-Rodriguez sold a pound of
3 methamphetamine to the CS. This is a serious crime. Second, under the circumstances it
4 was not unreasonable for Agent Wetteland to assume that an individual engaging in
5 selling narcotics would be armed. *See United States v. Post*, 607 F.2d 847, 851 (9th Cir.
6 1979). Mr. Martinez-Rodriguez was wearing a tight shirt; however, his shorts appeared
7 to fit loosely. It was not unreasonable for Agent Wetteland to believe that Mr. Martinez-
8 Rodriguez could have been concealing a weapon on his person. From the video provided
9 by Agent Wetteland of the buy, it appears that it took place in a crowded parking lot.
10 This may have put other individuals parking or returning to their cars in danger. An
11 examination of the last factor, whether Mr. Martinez-Rodriguez actively resisted arrest or
12 attempted to flee, in conjunction with the previous two factors precludes summary
13 judgment. Crediting Mr. Martinez-Rodriguez's version of the events, Mr. Martinez-
14 Rodriguez was not told to take any action and stood frozen as Agent Wetteland
15 approached. He did not resist and he did not attempt to flee. Under the totality of the
16 circumstances a reasonable fact finder could find that Agent Wetteland used excessive
17 force in arresting Mr. Martinez-Rodriguez. Although the crime was serious and Mr.
18 Martinez-Rodriguez could have been armed, if a jury believed that Mr. Martinez-
19 Rodriguez was not resisting arrest or attempting to flee, it could reasonably find that
20 twisting his fingers in a manner that caused three of them to break and pushing him to the
21 ground was force that need not, under the circumstances, be applied. The court finds that
22 there is a genuine issue of material fact regarding whether Agent Wetteland employed
23 excessive force and denies the motion for summary judgment on this ground.
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